GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute :—Industrial Dispute between the Workmen and the Management of Mysore Paper Mills Ltd. Bhadravathi.

Award of the Additional Industrial Tribunal Bangalore Published.

Read the following papers :—

(1) Letter No. I. T. No. 1165/67-68, dated the 30th October 1967 from Shri A. Panchakshariah Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE.
BANGALORE.

Dated 30th day of October 1967.

Present

Sri A. Panchakshariah, B. A. (Hons) LL.B. ... Presiding Officer.

I. D. No. 147 of 1966.

Workmen of Mysore Paper Mills, Ltd., Bhadravathi.
First Party.

Vs

Management of Mysore Paper Mills, Ltd. Bhadravathi.
Second Party.

Appearances

For I Party.—Sri K. Subba Rao, Advocate, Bangalore.

For II Party—Sri V. L. Narasimha Murthy, Advocate, Bangalore.

Reference.

G. O. No. LMA 268 LLD 66. Bangalore, dated 28th July 1966.

AWARD.

Out of the 115 Foremen of the Mysore Paper Mills, Ltd., Bhadravathi, which is the II Party in this case, only 13 have formed a Staff Union in December 1965 and have placed a charter of demands before the II Party on 16th February 1966.

The demands are 4 in number. The first one is about the alleged discrimination in fixation and payment of salary to all those of the class of Foremen. In addition to this demand there are three other demands which are not the subject matter of this Reference. The conciliation proceedings were held on 24th March 1966 by the Assistant Labour Commissioner, Mysore Division, Mysore. Out of the four demands made by the I Party, three were given up and regarding the demand which is now the subject matter of the Reference, the conciliation Officer submitted a failure report to the Government. Thereupon the Goverument of Mysore have referred this dispute for adjudication under Sec. 10 (1) (d) of the Industrial Disputes Act, 1947, to this tribunal by their Order No. LMA 268 LLD 66, dated 23th July 1966. The dispute as it stands relates to Seven of the Foremen said to be working under the II Party out of the 115 Foremen class of people. It would be better to narrate the points of dispute before I proceed to consider the scope of the Reference in this case. The points of dispute are as follows:—

"Is the Management of the Mysore Paper Mills, Ltd, Bhadravathi, justified in confirming the following seven foremen in different Grades and different rates of salary, thereby discriminating one against the other with effect from the year 1940 and onwards, even though the nature of work and degree of responsibility is the same.

(1) Sri N. Channakeshaviah,
(2) Sri A. V. Krisnna Swamy,
(3) Sri H. K. Venkataramiah,
(4) Sri A. M. Subba Rao,
(5) Sri M. V. Narayana Rao,
(6) Sri A. B. Sanjeeva Rao,
(7) Shri P. S. Prabhakar."
and

2. This Reference was registered as I. D. No. 147 of 1966 by this Tribunal and notices were issued to both the parties to put in their respective pleadings. The I Party is the Workmen of the Mysore Paper Mills, Ltd., Bhadravathi, represented by the Secretary Mysore Paper Mills Staff Union. The II Party is the Management of the Mysore Paper Mills, Ltd., Bhadravathi. On 16th August 1966 the I Party filed the Claim Statement. The II Party filed the counter statement on 20th September 1966. A reply was filed on 6th October 1966 and issues were framed on 5th November 1966. Briefly stated, the case of the I Party is that out of the seven Foremen mentioned in the Order of Reference, Sl. Nos. 1

to 3 are working in the Beaters, Department while Sl. No. 4 to 6 are working in the Bamboo Pulp department, while Sl. No. 7 is working in the Boiler Department Sl. No. 1 is Sri N. C. Channakeshavaiah who started his service under the II Party on 2nd February 1939 on a daily wage of 0 12-0. He was confirmed on a monthly salary of Rs 25 on 1st August 1941. Sl. No. 2 A. V. Krishna Swamy joined service of the II Party in 1936 on a daily wage of Re. 1 and he was also confirmed on 1st August 1941 on a monthly salary of Rs. 30. Sl. No. 3 Sri H. K. Venkataramiah joined the Mills on 26th May 1938 on a daily wage of Re. 1 and he too was confirmed on 1st August 1941 on a monthly salary of Rs. 35. One Sri T. M. Narayanaswamy against whom these seven people have voiced their grievance, joined the same Paper Mills on 1st December 1939 on a daily wage of 0 12 0 and he was also confirmed on 1st August 1941 on a salary of Rs. 35 per month. It is contended that all these three people were doing the same kind of work and had the same amount of responsibility. With ulterior motive the II Party has confirmed this T. N. Narayanaswamy on a higher salary than the other two people named above though he was also doing the same kind of work. The action of the II Party in this behalf is against all principles of fair-play and social justice. Thereafter, whenever three grades of salary were announced to these persons, this Narayanaswamy was always given a higher grade of salary and consequently he was also given a higher rate of annual increment. The three aggrieved persons brought this injustice to the notice of the II Party and requested them to rectify this discrimination. Persons in authority assured them that the injustice would be set right.

3. Regarding Sl. No. 4 A. M. Subba Rao, he was appointed on a daily wage of Re. 1 on 10th October 1938 and was confirmed on a monthly salary of Rs. 30 in the Bamboo Pulp Department from 1st July 1940. Sl. No. 5 Sri M. V. Narayana Swamy joined service on 21st April 1939 on a daily wage of 0-12-0 and he too was confirmed on 1st July 1940 on a monthly salary of Rs. 30 Sl. No. 6 Sri A. V. Sanjeeva Rao was employed on 8th September 1938 on a daily wage of Rs. 1.13 paise and he was confirmed on 1st June 1943 on a monthly salary of Rs 30. Both these Sri A. M. Subba Rao and Sri A. V Sanjeeva Rao were working as Foremen in the Bamboo Pulp Department and the Electrolizer Department. Two other Foremen working in the same department viz., Sri M. K. Gopalaswamy Rao and Sri Madhusudhan P. S., who were started on a less daily rate wages,

were confirmed on a higher monthly salary of Rs. 40. Inspite of the fact that the work and responsibility shouldered by Sri Sanjeeva Rao and Sri Subba Rao were the same as that of Gopalaswamy Rao and Madhusudhan, these two workmen were given a low start. Consequent of the low start the subsequent increment were also low. The last person Sri T. S. Prabhakar joined the service of the II Party on 27th November 1939 in the Boiler Department, on a pay of Rs. 1-3-0 per day and he was confirmed on 16th September 1944 on a salary of Rs 35 per month. This Prabhakar is doing the same work as Sri H. Ranganna, Sri Vanketeshan and Srinivasa Iyer who were given a higher start. All these seven people protested at this discrimination in their initial start and the subsequent increments. They gave both written representations as well as oral representations collectively and individually, but the management did not come to their rescue. It is therefore submitted that the 7 Foremen whose cases have now been referred for adjudication, are entitled to equal treatment and they are also entitled to the same grade of pay, annual increments and other emoluments attached to the posts of Foremen. It is also submitted that the Seniority of these 7 Foremen be restored with corresponding financial benefits.

4. The II Party has filed a Counter statement attacking the validity of the Reference on many grounds. It is contended that the Reference is highly belated and therefore it is liable to be rejected. Secondly it is submitted that the points of dispute do not fall under any of the items of the III Schedule of the Industrial Disputes Act and therefore there is no dispute whatsoever. The third point of attack is that the fixation of grades and rates of salary are the functions of the Management and unless *mala fides* are attributed, the I Party has no right to question the same. The different rates and grades of salaries for the entire set of the employees of the Mills have been, from time to time, fixed as a result of various settlements entered into between the management and the recognised Union of the workmen. Therefore this Reference is bad in law. At no time from 1941 onwards did the recognised Union raise any dispute of the present nature. Further, specifically under the Settlements of 1958 and 1961, the grades and rates of salary of Foremen were agreed to be settled and the entire class of Foremen including the Present seven persons mentioned in the Reference have taken the benefits under these settlements and therefore it is not open to the present set of persons to re-open the matters which have been

concluded by the previous settlements. As recently as 8th August 1966 there has been a settlement arrived at between the Management of the Mysore Paper Mills and the Mysore Paper Mills Labour Association during conciliation, and this Settlement also covers a revision of pay scales of Foremen and other workmen. Since this is a Settlement under Sec. 23 (3) of the Industrial Disputes Act, 1947, the present Reference is not maintainable. Even under Sec. 4 (3) of the said Act it is binding on all the workmen and hence on that ground also the Reference is liable to be rejected Under the aforesaid Settlement all these seven workmen are placed as Senior Foremen along with the other three referred to in the Claim Statement, in the revised scales with effect from 1st April 1965. Therefore the allegations regarding discrimination have no basis whatsoever. Even under the present Reference the Government have passed an order in No. LMA 268 LLD 66 dated 28th July 1966 stating that the demands 1, 2 and 3 did not permit a Reference for adjudication. The I Party did not take further steps to raise these demands again. Curiously enough all of a sudden the State Government on 28th July 1966 *i. e.*, on the same day has passed the present Order of Reference. It is therefore contended that when the Government passed the Reference on 28th July 1966, there was no dispute pending before it and there was no dispute regarding the present point. There was therefore no material at all before the State Government to come to an opinion that an industrial dispute exists between the workmen and the management of the Mysore Paper Mills Ltd. On that account also the Reference is illegal, void and inoperative and is liable to be rejected. Even if the Reference is valid, the claim made by the workmen in their claim statement is entirely different from and beyond the scope of this Reference. According to the Reference, the point of dispute is regarding an alleged discirmination of one against the other in the matter of grades and rates of salary of the seven persons mentioned in the order of Reference. In the Claim Statement it is sought to be made out on behalf of the workmen that there is discrimination against all the seven workmen and some of the persons whose names are mentioned therein. Therefore the claim statement is liable to be rejected. The II Party has questioned the correctness of the date of entry into service and the duration of the service and the grant of increments to these seven workmen. The II Party has also filed a tabular statement showing the date of entry into service of these seven workmen as

also M/s. Narayaneswamy, Madhusudhan and Ranganna, and the dates of confirmation and the salaries on which they were started and the increments granted to them. Since there has been no discrimination, the case of the I Party is liable to be rejected. The entire claim of the I Party workmen is to be rejected. On 6th October 1956 the I Party filed a Reply statement reiterating the allegations in the claim statement and denying the allegations in the counter statement of the II Party.

5. On the basis of these pleadings, in addition to the points of dispute in the Reference, 5 Issues have been framed by me. The case was taken up for trial both at Bhadravathi and Shimoga camps. The I Party examined six witnesses while the II Party has examined only two witnesses and both parties closed their respective cases. Arguments were heard at Headquarters.

6. For very many good reasons I may say that this Reference has no merit whatsoever. In doing so I will point out from the various legal aspects proved in this case that the I Party has no case whatsoever. I first of all take up the question of delay on the part of the I Party workmen in raising these demands. Undoubtedly as the evidence shows and as the Reference reads, this discrimination is stated to have had its genesis in the year 1940. From 1940 right up to 1965 there is no good and convincing evidence to show that the I Party workmen over complained of this discrimination. It is no doubt true that now and then a collective representation by the Foremen Class as a whole was being made. But specific cases of discrimination were never brought to the notice of the management. Out of the six witnesses examined by the I Party it is abundantly clear that the case of the I Party suffers from inexcusable delay. Before I take up the evidence in the case I would like to consider the position of law in this behalf. In 1959 (II) LLJ 26 their Lordships of the Supreme Court have very clearly laid down how delay works against the party who comes to the tribunal for any relief. This was a case in which a Reference had been made nearly 4½ years after the real grievance. Their Lordships of the Supreme Court have held :—

> "On these facts it must be held that relief or reinstatement ought not to be given on such a vague and much delayed Reference. It is true that there is no limitation prescribed for reference of disputes to an Industrial Tribunal, even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and conciliation proceedings have failed, particu-

larly so when disputes relate to discharge of workmen wholesale. The industry has to carry on and if for any reason there has been a wholesale discharge of the workmen and closure of the industry followed by its reopening and fresh recruitment of labour, it is necessary that a dispute relating to reinstatement of a large number of workmen should be referred for adjudication within a reasonable time.

In the instant case a Reference made four years after re-employment of most of the old workmen must be held to have been made beyond the reasonable time and the industrial tribunal ought not to grant the relief of reinstatement on such a Referenc. The fact that the order of discharge was made in contravention of Sec. 33 of the Industrial Disputes Act would not help the concerned workmen. The remedy for such a breach is provided by Section 33A of the Act which the concerned workmen failed to avail of in the instant case either collectively or individually."

In the present case the Reference has no doubt been made after the conciliation failed on the demand put forward by the workmen in 1956. but the demands as such which should have been made much earlier, were not made by these workmen. They have waited for nearly 25 years to wake up from the slumber. All the while there was a recognised Union for all the employees of the II Party *i.e*, the Mysore Paper Mills Labour Association. The present set of persons were also members of this Association and this fact has been admitted by W. W. 1 Gundu Rao. He admits that till the formation of the Staff Union in December 1965 all the 7 people named in the Reference were members of the Mysore Paper Mills Labour Association. It is also in the evidence of WWI and the other witnesses examined by the I Party that a case of discrimination of the present type was never put forward either individually or collectively by any of those workmen. In 1964 (I) LLJ 622, the Andhra Pradesh High Court has taken a similar view and has cited with approval a decision in 1959 (II) LLJ 26.

7. Let me examine the evidence of the I Party which has tried to explain the delay. W. W. 1 Gundu Rao was the former Assistant Secretary of the Mysore Paper Mills Labour Association.

At Present he is the Secretary of the Mysore Paper Mills Staff Union, and this Staff Union was formed in December 1965. His evidence is that in connection with the present dispute the Union has placed a charter of demands before the II Party as per Ex. M 7 and M 7 (a). Ex. M7 is dated 16th February 1966 and so is Ex. M 7 (a). On these demands conciliation was held and Ex. M5 is the conciliation proceedings. Out of the 4 demands, the union did not press three demands while it pressed the present demand. The discrimination is alleged to be in respect of the 7 workmen named in the Order of Reference. W. W. 1 admits that from 1st November 1944 all these persons were placed in different grades for the first time and according to him a discrimination has taken place right from 1940. He admits that the particulars given in Ex. M10 and M11 by the II Party are correct. From 1st April 1965 the grades are all uniform and even these agrieved persons mentioned in the Reference have no complaint except in regard to the difference in salary. It is suggested in the evidence of this witness that before 1963 the Mysore Paper Mills Labour Association had placed many demands for setting right the inequalities now complained of. The evidence of this witness is that the 7 persons named in the Order of Reference were complaining both orally and in writing about the inequalities in the fixation of salary from 1940. Ex. W6 is one such representation made to the General Manager through the Sectional Head Sri B. Krishnaswamy who has initialled Ex. W6. Ex. W7 is another written representation addrersed to the General Manager through the Superintendent, Bamboo Pul and Electrolizer Plant. The Superintendent has recommended on the margin of Ex. W7. Ex. W6 is a representation seeking for interview. WW1 admits that upto 1958 ther was a demand by the Union in respect of Foremen. In 1958 there was a demand but a settlement has covered cases of these Foremen also. The Settlement of 1958 which coverd the cases of Foremen also was also in effect from 1958 to 1963. No Reference is produced to tribunal to show that any representations were made by these 7 people in 1953 W. W.1 admits that the 3 or 4 representations given in writing in 1958 were all individual representations. Some Foremen have made these representations in writing and these 7 people have also given written representations in 1958 for which there is no proof whatsoever. In 1959 also representations are said to have been made by these people but there is nothing to show this. Ex. W 2 has been signed by all the Foremen and Ex. W 2 is in respect of the general grievances of the Foremen as a class. Similarly Ex. W 3. The witness admits

that there is no specific reference in any of these documents to the discrimination or the grievances of these seven Foremen under Reference. Further, the witness admits that in 1964 he was the Assistant Secretary os the Labour Association. As Assistant Secretary he has signed Ex. M. 4 which covers the cases of the Foremen also. He admits that on the basis of Ex. M 4 Settlement, Allocation Statement Ex. M 4 (a) was prepared and he as the Secretary of the Labour Association of the Paper Mills, of which the seven persons named in the Reference were members, has signed Ex. M4 (a). Ex.M 4 (a) covers the entire class of Foremen including the General Foremen, Senior Foremen and Foremen as a class. As per Ex. M4 (a) separate grades were shown to the General Foremen, Senior Foremen and Foremen. Ex. M4 (b) has been signed by this witness and he has endorsed the correctness of the entries in M 4 (a). It is thus clear from the evidence of this witness that there is no substance in the contention of the I Party Union that there was any discrimination made as alleged by them.

8. W.W. 2 Channakesavaiah is another witness examined by the I Party. He joined service of the II Party on 22nd March 1939 as a Peaters' Assistant on a daily wage of Rs. 0.50 paise. He was confirmed on 1st August 1941 as a Foreman on a monthly salary of Rs. 25/-. His educational qualification is only Mysore Lower Secondary course. He says that the other friends of his and particularly Sri T. M. Narayanaswamy was given a higher start than him and he has given a rious reason for that which cannot be accepted. He says that in this connection he made several oral and written representations to the Superintendent bringing to his notice grievances in the matter of fixation of the salaries and different scales. The Superintendent was telling this witness that his grievances would be redressed. There is no evidence to show this excepting his own interested version. In 1944 there was a revision in the grades of Foremen. This witness was given an annual increment of Rs. 3 while T. M. Narayanaswamy was given Rs. 5 and Krishnaswamy and Venkataswamy were given Rs. 4 each. In this connection the witness says that he and his friends made representations to the then General Manager and he promised to set right the matter. Ex. W6 was given by this witness along with Krishnaswamy, seeking permission to interview the General Manager. In 1956 he gave another representation to the General Manager through the Superintendent Ex. W8 is a copy of that representation which has been marked subject to proof, but no

proof is forthcoming. He gave another application to the Manager through the Superintendent and Ex. W10 is a copy of that application. Again Ex. W10 has not been proved. Besides this application the witness gave many other applications to the Superintendent in connection with his salary. Ex. W11 is a representation signed by all the Foremen given to the President of the Union not to include the cases of Foremen in the Truce Agreement. Even after 1958 he has given several representations to the General Manager with copies to the Chairman and the Labour Commissioner. In 1959 all the Foremen jointly gave a representation to permit them to see the General Manager. It is Ex. W13. Ex. M14 is the postal acknowledgement. Inspite of these representations and the assurances given by the management to these people, their lot was not improved. Therefore in December 1965 they formed a Staff Union. After the Staff Union was formed they placed their demands regarding the difference in salary. In 1966, 8th August, T. M. Narayanaswamy and this witness and all the Foremen were brought to one scale. Grievances of this witness appear to be more because some of the Foremen who joined service about 7 or 8 years ago were placed on a par with this witness. It is not so much that he was not placed along with T. M. Narayanaswamy and others. Thes 7 people and W.W. 1 are the founders of the Staff Union and at the present moment there are only 13 members in the Staff Union as against a total number of 115 Foremen. He admits that from 1939 to 1942 he had not made any written representation regarding the differences in fixation of wages between him and Narayanaswamy. Till 1942 the witness did not give any written representation. It is in only 1943 the witness gave a written representation as per Ex. W10. Even in Ex. W10 nothing is mentioned about the discrimination made between this witness and Narayanaswamy, and the witness has not produced any document to show that he ever made any representation in regard to the discrimination between him and Narayanaswamy. Ex. W16 is a copy of the representation sent to the General Manager on 14th September 1962. This is admitted subject to proof and no proof is forthcoming. Even in this document the names of Madhusudhan and Venkatesh do not find a place. So also in Ex. W17. The witness admits that as per the various settlement from time to time between the II Party and the Labour Association seven settlements have taken place and as per these various settlements D. A. and other benefits were given to this witness and his friends also. As per the settlement of 1958 the grades of the Foremen

were revised and he also got the benefit of the revision. Even in the Settlement of 1961 the grades of Foremen were revised and all the class of Foremen got this benefit. The Settlement of 1966 placed this witness and the other persons mentioned in the Order of Reference on a par with the others with effect from 1st April 1965 and they have also become senior foremen with similar salaries and grades. So much so there can be no grievance whatsoever for these people to complain. At any rate, there is no convincing proof to show that either this witness or the other persons mentioned in the Order of Reference ever tried to voice their grievances in regard to the discrimination. The witness has produced Ex. W32 said to have been given by him to M. W. 2 Sri Umanatha Rao. This Umanatha Rao was examined by the II Party and when he was in the Witness Box, this witness did not produce Ex. W32 and confront Sri Umanatha Rao with this document. What explanation Sri Umanatha Rao has given to this Ex. 32, it is not clear and Sri Umanatha Rao himself has not admitted this document. But anyway the witness admits that as against the remarks said to have been made on Ex. W32 by Sri Umanatha Rao he did not prefer any appeal. In the matter of the delay in representing their grievances the eivdence of the other witnesses *viz.*, W. W. 3, W. W. 4 W. W. 5 and W. W. 6 stands on the same footing. It is unnecessary for me to refer to that evidence in great detail. Sri Subba Rao argued that till the Staff Union was formed in December 1965, the Mysore Paper Mills Labour Association did not take up the cause of these 7 people. This argument has no substance whatsoever because it is admitted both by W. W. 1 and W. W. 2 that several Settlements came about between the II Party and the Mysore Paper Mills Labour Association and everyone of these people has taken the benefit of these settlements. Either there has been no discrimination whatsoever and even if there should be any such discrimination, it is a justifiable discrimination as has been explained by Sri Umanatha Rao in his evidence to which I will presently refer, or the only other possible explanation will be that these persons have waived their right by not presenting their claim in time. Anyway the discrimination which is alleged to have started in the year 1940 cannot be said to be the subject matter of a Reference in the year 1966 and 1967. For more than 25 years *i. e.*, for more than a generation these people have kept quiet and it is only in 1966 they have opened their eyes. I would say that this is a much stronger case than the one which I have referred to above. The delay in the cases referred to above

was only in the Government making References, whereas in the present case the delay goes to the very root of the matter. Their Lordships of the Supreme Court in 1959 (II) LLJ 26 have also indicated that these workmen should have filed applications under Section 33A complaining of the grievances against the II Party if the Government did not make such Reference in time. That has not been done. Therefore by any stretch of imagination the delay in this case is difficult to explain. On that point alone the Reference has to be thrown out.

9. I now proceed to the other aspect of the case *viz.*, the scope of this Reference. In doing so I once again repeat the exact wordings of this Reference which read as follows :—

> "Is the Management of the Mysore Paper Mills Ltd., Bhadravathi, justified in confirming the following seven Foremen in different Grades and different rates of salary thereby discriminating one against the other with effect from the year 1940 and onwards, even though the nature of work and degree of responsibility is the same?

The names of those seven people have been given in the Order of Reference. A plain reading of this Reference will show that the discrimination if at all either in the matter of salary or in the matter of fixation of grades, must confine itself only to these 7 people because the Reference does not say that compared to the other class of Foremen who are nearly 115 in number, these people have been discriminated. That is what exactly the I Party is trying to make out and in doing so the I Party is trying to enlarge the scope of this Reference and the powers of the tribunal. In 1962 (I) LLJ the Supreme Court has very clearly laid down as follows :—

> "Were the Reference read as 'Whether leave facilities should be increased and if so, to what extent, the industrial tribunal would have no jurisdiction to fix the quantum of festival holidays as it would be beyond the scope of the Reference."

Section 10 (4) of the Industrial Disputes Act very clearly lays down the limit and the scope of the Reference and the powers of the tribunal in interpreting the scope of the Reference. Section 10(4) reads :—

> "Where in an Order referring an industrial dispute to a Labour Court, tribunal or National Tribunal under

this section or in a subsequent order the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the tribunal or the National tribunal as the case may be shall confine its adjudication to those points and matters incidental thereto."

It is therefore clear from the wordings of Section. 10 (4) that the tribunal has no option but to confine itself to the order of Reference and adjudicate upon the same. When the Reference very specifically says in this case that the discrimination if at all, is between these 7 people it is not open to the tribunal to go beyond this Reference and bring in other class of Foremen who are not parties to this dispute and who are not before this tribunal. If the I Party felt that the scope of the present Reference is too narrow it could have been open to the I party to have moved the Government for an amendment of the Reference. Such a thing has not been done. 1961 (II) LLJ 1?4 may also be referred to in this connection. Their Lordships of the Supreme Court have held that:—

"In interpreting the terms of a Reference it would be unreasonable to rely upon the definitions of the workmen specified in the Act apart from and independently of the discriptive clause which limited them in the instant case to the category of workmen represented by the Respondent Union. The fact that the Industrial Tribunal hearing the dispute allowed representation to the Clerical staff also would not widen the jurisdiction and the scope of the Reference. It is true that under Section 36 of the Industrial Disputes Act it is open to the employees whose dispute has been referred for industrial adjudication to appear either individually or through their Union, but Section. 36 of the Act postulates a valid Reference being made on behalf of the employees concerned. If the Reference does not include the Clerical Staff and their grievances, it would not be open to the members of the Clerical Staff to bring their grievances before the tribunal by their individual applications or for the tribunal to widen the scope of its enquiry beyond the terms of the Reference by entertaining such individual applications."

Similarly their Lordships of the Supreme Court observed in 1961. (II, LLJ 691 that the scope of the Reference cannot be widened and the tribunal must confine itself to the actual wordings of the

Reference. To the same effect is another case in 1961 (II) LLJ 660. In 1962 (II) LLJ 227 their Lordships of the Supreme Court have observed:—

> "It is hardly necessary to emphasise that since the jurisdiction of the industrial tribunal in dealing with industrial disputes referred to it under Section. 10 is limited by Section 10 (4) to the points specifically mentioned in the Reference and matters incidental thereto."

XVI F. J. R page 133 may also be referred to in this connection. As it is, the I party in this case has not confined itself to the discrimination between the cases of persons mentioned in the Order of Reference but has tried to show that the case of these seven people have been discriminated from the cases of the persons mentioned in the claim statement. *viz.*, T. M. Narayanaswamy, Madhusadhan, Gopalaswamy Rao, etc. Those people are not before court and any decision given by this tribunal behind their back will not be binding on those people. The basis for the argument that the persons mentioned in the Order of Reference have been discriminated from those others, is that they have also been doing the same work and shouldered the same responsibility as the other class of Foremen and yet they are not given equal pay or placed on equal status as others. In this connection the II party has examined Sri Umanatha Rao to explain the reasons as to why these 7 people ware placed in different grades in 1944. Sri Umanatha Rao was the General Manager of the II Party from 1943 to 1949. Exhibits M. 12 to M. 20 were issued by him and they were also signed by him. At the time the grades of the persons mentioned in Ex M. 10 were fixed, he was the General Manager and they were fixed under his directions. On the basis of the Educational qualifications, their post service and the importance of the departments for the scheme of production, these grades were fixed. T. M. Narayanaswamy was given a higher grade than Channakeshavaiah W. W. 2, Krishnaswamy and Venkatiah, taking into consideration the efficiency and his good work and also taking into consideration his educational qualifications. Further he says that none of the persons mentioned in the Order of Reference ever made any grievance or complained to him while he was in the Office about the discrimination Admittedly this Narayanaswamy has passed the S. S. L. C. Examination, Madhusudhan has passed the Intermediate, Ranganna is holding a Diploma of Mechanical Engineering while M. R. Gopalaswamy Rao is also Senior Intermediate, so also Venkatiah is holding a Diploma. Compared to these people this Chennakeshaviah

W. W. 2, held education qualification of Middle School 1st year while H. K. Venkataramiah did not have any educational qualifications. M. V. Narayana Rao had only studied up to S. S. L. C. and so also A. V. Krishnaswamy. It is admitted by every one of these workmen in their evidence that they had no grievance whatsoever against Sri Umanatha Rao and Sri Umanatha Rao was also highly impartial against whom these people also did not have any grievance. Sri Umanatha Rao has given the reasons as to why they were placed in different grades. Taking their Educational qualifications, their efficiency and aptitude for work and their age and future of the department, these people were placed in the various grades. There is no law to the effect that persons doing the same work and holding the same resonsibility should be classified on the same basis. In the Supreme Court Notes, page 292, 15th September 1967, the following are the observations of the Supreme Court:—

> "The provisions of Article 14 or Article 16 do not include the laying down of selective tests nor do they preclude the Government from laying down qualifications for the post in question. Such qualification need not be only technical but they can also be general qualifications, relating to the suitability of the candidate for public service as such. It is therefore no right to say that in the appointment to the post of Tracers the Government ought to have taken into account only the technical proficiency of the candidate in the particular craft. It is open to the Government to consider also the General Qualification of the candidate and to give preference to candidates who have a better educational qualifications besides technical proficiency of a Tracer. Higher educational qualifications such a success in the S. S. L. C. examination are relevant considerations for fixing higher pay scales for Tracers who have passed the S. S. L. C. Exam nation, and the classification of 2 grades of Tracers with a higher pay scale and the other for non-matriculate Tracers with a lower pay scales is not violative of Article 14 and 16 of the Constitution."

10. As has been rightly explained by Sri Umanatha Rao against whom none of these workers had any grievance, and Sri Umanatha Rao also had no prejudice against any of these people. that these different grades had to be introduced in the interest of

the II Party's production Scheme If W. W. 2 Channakeshaviah was only Middle 1st year, he could certainly not claim a preference over T. M. Narayanaswamy or Madhusudhan or Ranganna who admittedly held higher qualifications. It is not true that for being a Foreman no qualifications were prescribed. But it must be remembered that a Foreman will not remain always a Foreman. There are chances of his being promoted depending upon his efficiency, his educational attainmentt etc.

11. The II party has contended that by virtue of the various settlements the I party workmen, or at any rate these seven workmen, are prohibited from raising this dispute, particularly they having taken the benefits under the various settlements. The case of the II Party has been narrated in paras 3 and 4 of the counter statement. I have already referred to in my earlier portion of this award that W. W. 2 and W. W. 1 have admitted the truth of these various settlements Further they have admitted having taken the benefits under the settlements. In fact the recent settlement of 8th August 1966 has actually given these people the benefit of a uniform scale of pay along with T. M. Narayanaswamy and others with effect from 1st April 1965. The fact that this settlement is subsequent to the Reference does not make much difference. It is the settlement that should prevail. In that view of the matter also I am of the opinion that the I Party workmen cannot re-open the matter again having taken the benefits under the former settlement.

12. In the result my finding on Issue No. 3 is that this Reference is bad in law as contended by the II party in paras 2, 3 and 5 of their counter-statement and it is laid for the various reasons which I have given. For the same reasons I hold on Issue No. 4 that the Government was not competent to make a Reference of this type and this Reference is illegal, void and inoperative and liable to be rejected. My finding on Issue No 1 is that the I Party has failed to prove that the II party has adopted a policy of discrimination, and my finding on the latter part of Issue No. 1 is that prior to 1st April 1965 these seven persons named in the Order of Reference are not entitled to be treated like Narayanaswamy, Madhusudhan and Ranganna and to be placed in the scale of Rs. 125-10-200-12-50-300. It is in evidence that subsequent to 1st April 1965 by virtue of the settlement these seven people were also placed in the same grade as those like Narayanaswamy, Madhusudhan and Ranganna. My finding on Issue No. 2 is that

the I Party has not lost any financial benefit as pleaded by them, much less are they entitled to the loss of any such imaginary financial benefit.

13. In the result this Reference fails and the same is rejected. Under the circumstances, each party will bear its own costs.

A. PANCHAKSHARIAH,
Presiding Officer,
Industrial Tribunal,
Bangalore-2.
30-10-67.

ORDER

Bangalore, dated the 7—14th November 1967.

S. O. 2218.—WHEREAS by State Government Order No. LMA 268 LLD 66, dated 28th July 1966, the Industrial Dispute between the Workmen and the Management of Mysore Paper Mills, Ltd., Bhadravathi, was referred to the Industrial Tribunal, Bangalore for adjudication.

AND WHEREAS the Additional Industrial Tribunal, Bangalore, has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 268 LLD 66.]

By Order and in the name of the Governor of Mysore,

1450 G. G. PUROHIT, *Under Secy.*